

Honorable Ronald B. Leighton  
U.S. District Judge

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KRISTINE M. NEIDINGER,

NO. C10-5702 RBL

Plaintiff,

vs.

DEFENDANTS' PROPOSED JURY  
INSTRUCTIONS

ELIZABETH WYATT EARP; RICHARD D.  
MALIDORE and LOIS K. MALIDORE and  
the marital community thereof; JAMES  
PATRICK WILLIAMS and REBEKAH JILL  
WILLIAMS and the marital community  
thereof; and JULIE McARTHUR and  
ALLEN McARTHUR and the marital  
community thereof,

Defendants.

Defendants respectfully request the Court to submit to the jury the following  
instructions.

DATED this 7th day of September, 2012.

s/ MICHELLE LUNA-GREEN  
MICHELLE LUNA-GREEN/WSB#27088  
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Tacoma, WA 98402-2160  
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DEFENDANTS' PROPOSED JURY INSTRUCTIONS			
Number	Title	Source	Page No.
1	Particular rights – fourth amendment – unreasonable seizure of person – excessive force	9 <sup>th</sup> Cir. Model Jury Instructions 9.22 (modified); <i>Graham v. Connor</i> , 490 U.S. 386, 396-97, 109 S.Ct. 1865, 1872 (1989); <i>Scott v. United States</i> , 436 U.S. 128, 137-39, 98 S.Ct. 1717, 1723-24, 56 L.Ed.2d 168 (1978); <i>Hazeltine v. Montoya</i> , 2012 WL 761242, 8 (E.D.Cal. 2012)	2
2	Integral Participation	<i>Cunningham v. Gates</i> , 229 F.3d 1271, 1289 -1290 (9 <sup>th</sup> Cir. 2000)	2
-	Defendants' Proposed Jury Interrogatories	See Trial Brief	Interrogatories p. 1 & 2

## Defendants' Proposed Instruction No. 1

PARTICULAR RIGHTS – FOURTH AMENDMENT-UNREASONABLE SEIZURE OF  
PERSON-EXCESSIVE NONDEADLY FORCE

In general, a seizure of a person is unreasonable under the Fourth Amendment if a corrections officer uses excessive force in restraining another or in defending himself, herself or others. Thus, in order to prove an unreasonable seizure in this case, the plaintiff must prove by a preponderance of the evidence that the officers used excessive force when they used force upon plaintiff in placing her in restraints while in the individual booking cell.

Under the Fourth Amendment, a corrections officer may only use such force as is “objectively reasonable” under all of the circumstances. In other words, you must judge the reasonableness of a particular use of force from the perspective of a reasonable officer on the scene and not with the 20/20 vision of hindsight and *without regard to their underlying intent or motivation*.

In determining whether the officers used excessive force in this case, consider all of the circumstances known to the officers on the scene, including:

1. The severity of the crime or other circumstances to which the officers were responding;
2. Whether the plaintiff posed an immediate threat to the safety of the officers or to others;
3. Whether the plaintiff was actively resisting arrest restraint or attempting to evade arrest restraint by flight;
4. The amount of time and any changing circumstances during which the officer had to determine the type and amount of force that appeared to be necessary;
5. The type and amount of force used;
6. The availability of alternative methods to subdue the plaintiff; and
7. Whether inmate posed an immediate threat to the safety of herself.
8. *Whether plaintiff's actions posed a threat to maintaining security and order in the jail.*

9th Circuit Model Civil Jury Instruction 9.22 (2007) (modified); *Graham v. Connor*, 490 U.S.

1 386, 396-97, 109 S.Ct. 1865, 1872 (1989); *Scott v. United States*, 436 U.S. 128, 137-39, 98  
2 S.Ct. 1717, 1723-24, 56 L.Ed.2d 168 (1978)(“An officer’s evil intentions will not make a  
3 Fourth Amendment violation out of an objectively reasonable use of force). *See Hazeltine v.*  
4 *Montoya*, 2012 WL 761242, 8 (E.D.Cal. 2012) (“the Graham factors do not adequately take  
5 into consideration the governmental interests at stake when resistance occurs in a custodial  
6 setting).  
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Defendants' Proposed Instruction No. 2

INTEGRAL PARTICIPATION

Even if an officer's actions do not independently constitute excessive force, that officer may be liable for excessive force used against another person if that officer was an integral participant to that use of force. An officer is an integral participant if he participated in some meaningful way in that use of force, was aware of the use of force to be used, and did not object to it and had a realistic opportunity to intercede and failed to do so.

*Cunningham v. Gates*, 229 F.3d 1271, 1289 -1290 (9<sup>th</sup> Cir. 2000)

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KRISTINE M. NEIDINGER,

NO. C10-5702 RBL

Plaintiff,

vs.

DEFENDANTS' PROPOSED JURY  
INTERROGATORIES

COUNTY OF PIERCE; ELIZABETH  
WYATT EARP; RICHARD D. MALIDORE  
and LOIS K. MALIDORE and the marital  
community thereof; JAMES PATRICK  
WILLIAMS and REBEKAH JILL  
WILLIAMS and the marital community  
thereof; and JULIE McARTHUR and  
ALLEN McARTHUR and the marital  
community thereof,

Defendants.

Answer the following questions only if you find a deputy or deputies used excessive force.

We, the jury, answer questions submitted by the Court as follows:

QUESTION NO. 1: When officers entered the cell to restrain plaintiff, had plaintiff obeyed  
commands by turning and facing the wall?

Answer "Yes" or "No"

ANSWER: ☐ Yes ☐ No

1 QUESTION NO. 2: Did any officer choke or attempt to choke plaintiff with their hands?  
2 Answer "Yes" or "No"

3 ANSWER: ☐ Yes ☐ No  
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5 QUESTION NO. 3: Did Sergeant Malidore continue to tase plaintiff after she was placed in  
6 restraints?

7 Answer "Yes" or "No"

8 ANSWER: ☐ Yes ☐ No

9 Verdict returned this \_\_\_\_ day of September 2012.  
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Presiding Juror  
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